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PTO/SB/82 (09-03)  
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**REVOCATION OF POWER OF  
 ATTORNEY WITH  
 NEW POWER OF ATTORNEY  
 AND  
 CHANGE OF CORRESPONDENCE ADDRESS**

Application Number	09/847,644
Filing Date	05/02/2001
First Named Inventor	Jared Polis Schutz, et al.
Art Unit	2622
Examiner Name	Lamb, Twyler Marie
Attorney Docket Number	Proflowers-P2-01

I hereby revoke all previous powers of attorney given in the above-identified application.

☐ A Power of Attorney is submitted herewith.

OR

☒ I hereby appoint the practitioners associated with the Customer Number: 28710

☐ Please change the correspondence address for the above-identified application to:

☒ The address associated with  
 Customer Number:

28710

OR

☐ Firm or  
 Individual Name

Address

Address

City

State

Zip

Country

Telephone

Fax

I am the:

☐ Applicant/Inventor.

☒ Assignee of record of the entire interest. See 37 CFR 3.71.  
 Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

**SIGNATURE of Applicant or Assignee of Record**

Name

William Strauss, Chief Executive Officer

Signature

Date

June 26, 2004

Telephone

(858) 729-2700

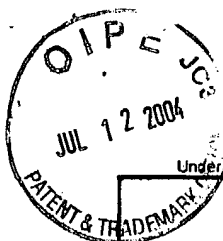
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 37 CFR 1.38. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2

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PTO/SB/66 (08-03)  
Approved for use through 07/31/2006. OMB 0551-0031  
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

### STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: Provide Commerce, Inc.

Application No./Patent No.: 09/847,644 Filed/Issue Date: Filed 05/02/2001

Entitled: Generating a Courier Shipping Label or the Like, Including Ornamental Graphic Design, at a Non-Courier Printer

Provide Commerce, Inc., a Corporation  
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.  
The extent (by percentage) of its ownership interest is \_\_\_\_\_ %  
in the patent application/patent identified above by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

OR

B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: David McCarter To: Proflowers, Inc.  
The document was recorded in the United States Patent and Trademark Office at  
Reel 012118, Frame 0000, or for which a copy thereof is attached.
2. From: Jared Schutz To: Proflowers, Inc.  
The document was recorded in the United States Patent and Trademark Office at  
Reel 012104, Frame 0020, or for which a copy thereof is attached.
3. From: Proflowers, Inc. To: Provide Commerce, Inc.  
The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☒ Copies of assignments or other documents in the chain of title are attached.

[NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

June 26, 2004  
Date  
(858) 729-2700  
Telephone number

William Strauss  
Typed or printed name  
[Signature]  
Signature  
Chief Executive Officer  
Title

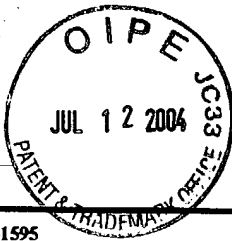
This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Form PTO-1595

(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

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## RECORDATION FORM COVER SHEET

## PATENTS ONLY

U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

## 1. Name of conveying party(ies):

Proflowers, Inc., San Diego, CA

## 2. Name and address of receiving party(ies)

Name: Provide Commerce, Inc.

Internal Address: \_\_\_\_\_

Second Floor

Street Address: 5005 Waterodge Vista Drive

City: San Diego State: CA Zip: 92121

Additional name(s) & address(es) attached? ☐ Yes ☒ NoAdditional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

## 3. Nature of conveyance:

☐

Assignment

☐

Merger

☐

Security Agreement

☒

Change of Name

☐

Other \_\_\_\_\_

Execution Date: 12/19/2003

## 4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

A. Patent Application No.(s) 09/847,664

B. Patent No.(s) \_\_\_\_\_

Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Peter K. Trzyna

Internal Address: \_\_\_\_\_

Street Address: P.O. Box 7131

City: Chicago State: IL Zip: 60680-7131

## 6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

☐

Enclosed

☒

Authorized to be charged to deposit account

## 8. Deposit account number:

50-0235

DO NOT USE THIS SPACE

## 9. Signature.

Peter K Trzyna

Name of Person Signing

Signature

June 16, 2004

Date

Total number of pages including cover sheet, attachments, and documents: 1

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

# Delaware

PAGE 1

## The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT "PROVIDE COMMERCE, INC." HAS FILED THE FOLLOWING DOCUMENTS:

CERTIFICATE OF INCORPORATION, FILED THE SIXTH DAY OF FEBRUARY, A.D. 1998, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FIRST DAY OF JUNE, A.D. 1999, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE SECOND DAY OF SEPTEMBER, A.D. 1999, AT 9 O'CLOCK A.M.

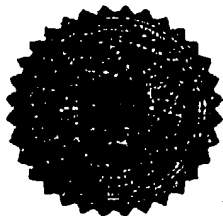
CERTIFICATE OF AMENDMENT, FILED THE FOURTEENTH DAY OF DECEMBER, A.D. 1999, AT 9 O'CLOCK A.M.

RESTATED CERTIFICATE, FILED THE TWENTY-EIGHTH DAY OF DECEMBER, A.D. 1999, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE SEVENTEENTH DAY OF OCTOBER, A.D. 2000, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "PROFLOWERS, INC." TO "PROVIDE COMMERCE, INC.", FILED THE TWELFTH DAY OF SEPTEMBER, A.D. 2003, AT 5:51 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TENTH DAY OF DECEMBER, A.D. 2003, AT 9:49 O'CLOCK P.M.



2853678 8340

030822515

*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 2826869

DATE: 12-19-03



OCTOBER 2 2001

PETER K. TRZYNA  
P.O. BOX 7131  
CHICAGO, IL 60680



PTAS

**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231



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JUL 15 2004

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UNITED STATES PATENT AND TRADEMARK OFFICE  
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THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 08/22/2001

REEL/FRAME: 012104/0828  
NUMBER OF PAGES: 4

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:  
SCHUTZ, JARED

DOC DATE: 05/03/2001

ASSIGNEE:  
PROFLOWERS, INC.  
5005 WATER RIDE VISTA DRIVE  
SAN DIEGO, CALIFORNIA 92121

SERIAL NUMBER: 09847644  
PATENT NUMBER:

FILING DATE: 05/02/2001  
ISSUE DATE:

MARCUS KIRK, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231



\*101826883B\*

AUTHORIZATION TO CHARGE ADDITIONAL FEES TO DEPOSIT ACCOUNT

OCTOBER 29, 2001

TO: OFFICE OF FINANCE  
FROM: ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS  
SUBJECT: DEPOSIT ACCOUNT CHARGE(S)

CHARGE THE DEPOSIT ACCOUNT LISTED BELOW ADDITIONAL FEE(S) AS INDICATED BELOW. AUTHORIZATION TO CHARGE ADDITIONAL FEES HAS BEEN PROVIDED PER THE ATTACHED COVER SHEET, OR BY DIRECT CONTACT WITH THE CUSTOMER.

DEPOSIT ACCOUNT NUMBER: 500235  
PROPERTY NUMBER: 09847644

RECORDING FEES:

FEE CODE: 581 AMOUNT: 40

IF YOU HAVE ANY QUESTIONS REGARDING THIS NOTICE, YOU MAY CONTACT THE INDIVIDUAL WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723.

MARCUS KIRK, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

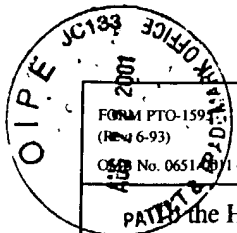
TRADEMARK SERVICE FEES:	FEE CODE:
RECORDING FIRST MARK	481
RECORDATION SECOND AND SUBSEQUENT MARK IN SAME DOCUMENT	482
LABOR CHARGES FOR SERVICES PER HOURS OR FRACTION THEREOF	484
UNSPECIFIED OTHER SERVICES	485

PATENT SERVICE FEES:

RECORDING EACH PATENT ASSIGNMENT, AGREEMENT, OTHER PAPER, PER PROPERTY	581
---	-----

LABOR CHARGES FOR SERVICES PER HOUR	584
(\$30) OR FRACTION THEREOF	
UNSPECIFIED OTHER SERVICES	585





FORM PTO-1594  
(Rev. 6-93)  
Case No. 0651 (exp. 4/94)

08-29-2001

U.S. Department of Commerce  
Patent And Trademark Office



101826883

hed original document or copy thereof.

1. Name of conveying party(ies):

Jared Schutz

8-22-01

Additional name(s) of conveying party(ies) attached?

☐ Yes ☒ No

3. Nature of conveyance:

☒ Assignment

☐ Merger

☐ Security Agreement

☐ Change of Name

☐ Other

Execution Date:

2. Name and address of receiving party(ies):

Name: ProFlowers, Inc.

Internal Address:

Street Address: 5005 Water Ride Vista Drive

City: San Diego

State: California

Zip: 92121

Additional name(s) & address(es) attached?

☐ Yes ☒ No

4. Application number(s) or registration number(s): 09/847,644

If this document is being filed together with a new application, the execution date of the application is

A. Patent Application No.(s) 09/847,644

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Peter K. Trzyna

Internal Address: P.O. Box 7131

City: CHICAGO State: IL Zip: 60680

6. Total number of applications and patents involved 1

7. Total fee (37 C.F.R. 3.41) \$ 40.00

☐ Enclosed

☒ Authorized to be charged to deposit account

8. Deposit account number: 50-0235

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Peter K. Trzyna

Name of Person Signing

Signature

Date

August 20, 2001

Total number of pages including cover sheet, attachments and document: 4

I hereby certify that this correspondence is being filed by deposit with the United States Postal Service as first class mail in an envelope with sufficient postage and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231 on the date indicated below.

Signed:

Peter K. Trzyna (Reg. No. 32,601)

Date:

AUGUST 20, 2001

PATENT

Paper No. 3

File: Proflowers-P2-01

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventors	:	David McCarter, Jared Schutz
Serial No.	:	09/847,644
Filed	:	May 2, 2001
For	:	GENERATING A COURIER SHIPPING LABEL OR THE LIKE, INCLUDING AN ORNAMENTAL GRAPHIC DESIGN, AT A NON-COURIER PRINTER
Group Art Unit	:	2624
Examiner	:	

Honorable Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

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AUG 24 2001

**ASSIGNMENT OF INVENTION**

S I R :

OFFICE OF PETITIONS  
DEPUTY A/C PATENTS

WHEREAS, ProFlowers, Inc. (hereinafter, the "Assignee"), a corporation organized under the laws of the State of Delaware, having an address at 5005 Water Ride Vista Dr., San Diego, California, 92121, has an acknowledged right to the entire right, title, and interest therein, thereto, and thereunder, including, patent rights and any applications and patents related thereto or claiming priority therefrom;

NOW, THEREFORE, in consideration of ten dollars (\$10.00) in hand paid to me, the receipt of which by me is hereby acknowledged, and other good and valuable consideration received by me, I hereby acknowledge that I have sold, assigned, transferred, and set over, and by these

presents do hereby sell, assign, transfer, and set over, unto the Assignee, its successors, and, assigns, the entire right, title and interest in, to, and under any and all inventions disclosed or described in the above-identified patent application and any and all rights thereto, including the above-identified patent application, any and all United States and foreign patents which may be granted pursuant thereto, and any and all United States and foreign applications, continuations, divisions, renewals, and substitutes thereof, as well as any reissues or reexamination patent(s); and I hereby authorize and request the Commissioner of Patents and Trademarks of the United States to issue all Letters Patent for said invention to the Assignee its successors, and assigns, in accordance with the terms of this instrument;

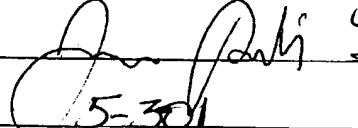
AND I HEREBY covenant that I have full right to convey the entire interest assigned, and that I have not executed, and will not execute, any agreement in conflict herewith;

AND I HEREBY further covenant that I respectively will communicate to the Assignee, its successors, legal representatives, and assigns, any facts known respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing, and reissue applications, make all rightful oaths, and generally do everything possible to aid the assignee, its successors, legal representatives, and assigns, to obtain and enforce proper patent protection for said invention;

THIS ASSIGNMENT of Invention is the entire agreement as to its subject matter. If any portion of this Assignment of Invention is determined to be invalid, illegal, or unenforceable under any present or future law by the final judgment of any court of competent jurisdiction, the remainder of this Assignment of Invention shall not be effected thereby. It is the intention of the undersigned that if any portion of this Assignment of Invention is determined to be invalid, a

portion as similar in terms to such portion as is possible to be legal, valid, and enforceable shall be added in lieu thereof.

IN TESTIMONY WHEREOF, I hereunto set hand and seal on the day and year set opposite my signature.

Inventor's Printed Full Name: Jared Schutz  
Inventor's Signature:   
Date: 5-30-01  
Citizenship: USA  
Residence & Post Office Address: 200 Hawthorne Avenue  
City: Boulder  
State Zip: Colorado, 80302



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

NOVEMBER 01, 2001

PTAS

PETER K. TRZYNA  
PO BOX 7131  
CHICAGO, IL 60680



\*101883198A\*

UNITED STATES PATENT AND TRADEMARK OFFICE  
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RECORDATION DATE: 08/22/2001

REEL/FRAME: 012118/0093  
NUMBER OF PAGES: 9

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:  
MCCARTER, DAVID

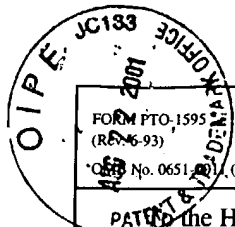
DOC DATE: 01/24/2000

ASSIGNEE:  
PROFLOWERS, INC.  
5005 WATER RIDE VISTA DRIVE  
SAN DIEGO, CALIFORNIA 92121

SERIAL NUMBER: 09847644  
PATENT NUMBER:

FILING DATE: 03/02/2001  
ISSUE DATE:

MARCUS KIRK, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS



FORM PTO-1595  
(REV. 6-93)  
Office No. 0651-001 (exp. 4/94)

11-01-2001



T

U.S. Department of Commerce  
Patent And Trademark Office

Patented to the Honorable Commissioner of

101883198

attached original document or copy thereof.

1. Name of conveying party(ies):

David McCarter

8.22.01

Additional name(s) of conveying party(ies) attached?

☐ Yes ☒ No

3. Nature of conveyance:

☒ Assignment

☐ Merger

☐ Security Agreement

☐ Change of Name

☐ Other

Execution Date:

1/24/00

2. Name and address of receiving party(ies):

Name: ProFlowers, Inc.

Internal Address:

Street Address: 5005 Water Ride Vista Drive

City: San Diego

State: California

Zip: 92121

Additional name(s) & address(es) attached?

☐ Yes ☒ No

4. Application number(s) or registration number(s): 09/847,644

If this document is being filed together with a new application, the execution date of the application is

A. Patent Application No.(s) 09/847,644

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Peter K. Trzyna

Internal Address: P.O. Box 7131

City: CHICAGO State: IL Zip: 60680

6. Total number of applications and patents involved 1

7. Total fee (37 C.F.R. 3.41) \$ 40.00

☐ Enclosed

☒ Authorized to be charged to deposit account

8. Deposit account number: 50-0235

(Attach duplicate copy of this page if paying by deposit account)

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Peter K. Trzyna

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments and document: 9

## PROFLOWERS.COM

### EMPLOYEE INNOVATIONS AND PROPRIETARY RIGHTS ASSIGNMENT AGREEMENT

This Agreement is intended to formalize in writing certain understandings and procedures which have been in effect since the time I was initially employed by Proflowers.com ("Proflowers") In return for my new or continued employment by Proflowers and other good and valuable consideration, the receipt and sufficiency of which I hereby acknowledge, I acknowledge and agree that:

1. Prior Work. All previous work done by me for Proflowers relating in any way to the conception, reduction to practice, creation, derivation, design, development, manufacture, sale or support of products or services for Proflowers is the property of Proflowers, and I hereby assign to Proflowers all of my right, title and interest in and to such previous work.

2. Proprietary Information. My employment creates a relationship of confidence and trust between Proflowers and me with respect to any information:

- (a) Applicable to the business of Proflowers; or
- (b) Applicable to the business of any client or customer of Proflowers, which may be made known to me by Proflowers or by any client or customer of Proflowers, or learned by me in such context during the period of my employment.

All such information has commercial value in the business in which Proflowers is engaged and is hereinafter called "Proprietary Information." By way of illustration, but not limitation, Proprietary Information includes any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of Proflowers, and includes, without limitation, respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information. "Proprietary Information" also includes proprietary or confidential information of any third party who may disclose such information to Proflowers or to me in the course of Proflowers' business.

3. Ownership and Nondisclosure of Proprietary Information. All Proprietary Information is the sole property of Proflowers, Proflowers' assigns, and Proflowers' customers, and Proflowers, Proflowers' assigns and Proflowers' customers shall be the sole and exclusive owner of all patents, copyrights, mask works, trade secrets and other rights in the Proprietary Information. I hereby do and will assign to Proflowers all rights, title and interest I may have or acquire in the Proprietary Information. At all times, both during my employment by Proflowers and after termination of such employment, I will keep in confidence and trust all Proprietary Information, and I will not use or disclose any Proprietary Information or anything directly

relating to Proprietary Information without the written consent of Proflowers, except as may be necessary in the ordinary course of performing my duties as an employee of Proflowers.

4. Ownership and Return of Materials. All materials (including, without limitation, documents, drawings, models, apparatus, sketches, designs, lists, and all other tangible media of expression) furnished to me by Proflowers shall remain the property of Proflowers. Upon termination of my employment, or at any time on the request of Proflowers before termination, I will promptly (but no later than five (5) days after the earlier of my employment's termination or Proflowers' request) destroy or deliver to Proflowers, at Proflowers' option, (a) all materials furnished to me by Proflowers, (b) all tangible media of expression which are in my possession and which incorporate any Proprietary Information or otherwise relate to Proflowers' business, and (c) written certification of my compliance with my obligations under this sentence.

5. Innovations. As used in this Agreement, the term "Innovations" means all processes, machines, manufactures, compositions of matter, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), moral rights, mask works, trademarks, trade names, trade dress, trade secrets, know-how, ideas (whether or not protectable under trade secret laws), and all other subject matter protectable under patent, copyright, moral right, mask work, trademark, trade secret or other laws, and includes without limitation all new or useful art, combinations, discoveries, formulae, manufacturing techniques, technical developments, discoveries, artwork, software, and designs. "Innovations" includes "Inventions," which is defined to mean any inventions protected under patent laws.

6. Disclosure of Prior Innovations. I have identified on Exhibit A ("Prior Innovations") attached hereto all Innovations, applicable to the business of Proflowers or relating in any way to Proflowers' business or demonstrably anticipated research and development or business, which were conceived, reduced to practice, created, derived, developed, or made by me prior to my employment with Proflowers (collectively, the "Prior Innovations"), and I represent that such list is complete. I represent that I have no rights in any such Innovations other than those Prior Innovations specified in Exhibit A ("Prior Innovations"). If there is no such list on Exhibit A ("Prior Innovations"), I represent that I have neither conceived, reduced to practice, created, derived, developed nor made any such Prior Innovations at the time of signing this Agreement.

7. Assignment of Innovations; License of Prior Innovations. I hereby agree promptly to disclose and describe to Proflowers, and I hereby do and will assign to Proflowers or Proflowers' designee my entire right, title, and interest in and to, (a) each of the Innovations (including Inventions), and any associated intellectual property rights, which I may solely or jointly conceive, reduce to practice, create, derive, develop or make during the period of my employment with Proflowers, which either (i) relate, at the time of conception, reduction to practice, creation, derivation, development, or making of such Innovation, to Proflowers' business or actual or demonstrably anticipated research or development, or (ii) were developed on any amount of Proflowers' time or with the use of any of Proflowers' equipment, supplies, facilities or trade secret information, or (iii) resulted from any work I performed for Proflowers, and (b) each of the Innovations which is not an Invention (as demonstrated by me by evidence meeting the clear and convincing standard of proof), and any associated intellectual property



rights, which I may solely or jointly conceive, develop, reduce to practice, create, derive, develop, or make during the period of my employment with Proflowers, which are applicable to the business of Proflowers (collectively, the Innovations identified in clauses (a) and (b) are hereinafter the "Proflowers Innovations"). To the extent any of the rights, title and interest in and to Proflowers Innovations cannot be assigned by me to Proflowers, I hereby grant to Proflowers an exclusive, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable rights, title and interest. To the extent any of the rights, title and interest in and to Proflowers Innovations can be neither assigned nor licensed by me to Proflowers, I hereby irrevocably waive and agree never to assert such non-assignable and non-licensable rights, title and interest against Proflowers or any of Proflowers' successors in interest to such non-assignable and non-licensable rights. I hereby grant to Proflowers or Proflowers' designees a royalty free, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice all applicable patent, copyright, moral right, mask work, trade secret and other intellectual property rights relating to any Prior Innovations which I incorporate, or permit to be incorporated, in any Proflowers Innovations. Notwithstanding the foregoing, I agree that I will not incorporate, or permit to be incorporated, any Prior Innovations in any Proflowers Innovations without Proflowers' prior written consent.

8. Future Innovations. I recognize that Innovations or Proprietary Information relating to my activities while working for Proflowers and conceived, reduced to practice, created, derived, developed, or made by me, alone or with others, within three (3) months after termination of my employment may have been conceived, reduced to practice, created, derived, developed, or made, as applicable, in significant part while employed by Proflowers. Accordingly, I agree that such Innovations and Proprietary Information shall be presumed to have been conceived, reduced to practice, created, derived, developed, or made, as applicable, during my employment with Proflowers and are to be promptly assigned to Proflowers unless and until I have established the contrary by written evidence satisfying the clear and convincing standard of proof.

9. Cooperation in Perfecting Rights to Proprietary Information and Innovations.

(a) I agree to perform, during and after my employment, all acts deemed necessary or desirable by Proflowers to permit and assist Proflowers, at Proflowers' expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Proprietary Information and Innovations assigned or licensed to, or whose rights are irrevocably waived and shall not be asserted against, Proflowers under this Agreement. Such acts may include, but are not limited to, execution of documents and assistance or cooperation (i) in the filing, prosecution, registration, and memorialization of assignment of any applicable patents, copyrights, mask work, or other applications, (ii) in the enforcement of any applicable patents, copyrights, mask work, moral rights, trade secrets, or other proprietary rights, and (iii) in other legal proceedings related to the Proprietary Information or Innovations.

(b) In the event that Proflowers is unable for any reason to secure my signature to any document required to file, prosecute, register, or memorialize the assignment of any patent, copyright, mask work or other applications or to enforce any patent, copyright, mask work, moral right, trade secret or other proprietary right under any Proprietary Information

(including improvements thereof) or any Innovations (including derivative works, improvements, renewals, extensions, continuations, divisionals, continuations in part, continuing patent applications, reissues, and reexaminations thereof), I hereby irrevocably designate and appoint Proflowers and Proflowers' duly authorized officers and agents as my agents and attorneys-in-fact to act for and on my behalf and instead of me, (i) to execute, file, prosecute, register and memorialize the assignment of any such application, (ii) to execute and file any documentation required for such enforcement, and (iii) to do all other lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance, and enforcement of patents, copyrights, mask works, moral rights, trade secrets or other rights under the Proprietary Information, or Innovations, all with the same legal force and effect as if executed by me.

10. No Violation of Rights of Third Parties. My performance of all the terms of this Agreement and as an employee of Proflowers does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me prior to my employment with Proflowers, and I will not disclose to Proflowers, or induce Proflowers to use, any confidential or proprietary information or material belonging to any previous employer or others. I am not a party to any other agreement which will interfere with my full compliance with this Agreement. I agree not to enter into any agreement, whether written or oral, in conflict with the provisions of this Agreement.

11. Survival. This Agreement (a) shall survive my employment by Proflowers; (b) does not in any way restrict my right or the right of Proflowers to terminate my employment at any time, for any reason or for no reason; (c) inures to the benefit of successors and assigns of Proflowers; and (d) is binding upon my heirs and legal representatives.

12. Nonassignable Inventions. This Agreement does not apply to an Invention which qualifies fully as a nonassignable invention under the provisions of Section 2870 of the California Labor Code. I acknowledge that a condition for an Invention to qualify fully as a nonassignable invention under the provisions of Section 2870 of the California Labor Code is that the invention must be protected under patent laws. I have reviewed the notification in Exhibit B ("Limited Exclusion Notification") and agree that my signature acknowledges receipt of the notification. However, I agree to disclose promptly in writing to Proflowers all Innovations (including Inventions) conceived, reduced to practice, created, derived, developed, or made by me during the term of my employment and for three (3) months thereafter, whether or not I believe such Innovations are subject to this Agreement, to permit a determination by Proflowers as to whether or not the Innovations should be the property of Proflowers. Any such information will be received in confidence by Proflowers.

13. Nonsolicitation. During the term of this Agreement and for a period of one year thereafter, irrespective of the reason for termination of employment, Employee agrees not to, directly or indirectly, separately or in association with others:

13.1 Interfere with, impair, disrupt or damage Proflowers' relationship with any of its clients or prospective clients by soliciting or encouraging or causing others to solicit or encourage, any of them for the purpose of diverting or taking away the business such clients have with Proflowers; or

13.2 Interfere with, impair, disrupt or damage Proflowers' business by soliciting, encouraging or causing others to solicit or encourage any of Proflowers' employees to discontinue their employment with Proflowers.

14. Injunctive Relief. A breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to Proflowers for which there will be no adequate remedy at law, and Proflowers shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

15. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by telecopy or facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notices to me shall be sent to any address in Proflowers' records or such other address as I may specify in writing. Notices to Proflowers shall be sent to Proflowers' Human Resources Department or to such other address as Proflowers may specify in writing.

16. Governing Law. This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of California, as such laws are applied to agreements entered into and to be performed entirely within California between California residents. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in California, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in California, such personal jurisdiction shall be nonexclusive.

17. Severability. If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

18. Waiver; Amendment; Modification. The waiver by Proflowers of a term or provision of this Agreement, or of a breach of any provision of this Agreement by me, shall not be effective unless such waiver is in writing signed by Proflowers. No waiver by Proflowers of, or consent by Proflowers to, a breach by me, will constitute a waiver of, consent to or excuse of any other or subsequent breach by me. This Agreement may be amended or modified only with the written consent of both me and Proflowers. No oral waiver, amendment or modification shall be effective under any circumstances whatsoever.

19. Entire Agreement. This Agreement represents my entire understanding with Proflowers with respect to the subject matter of this Agreement and supersedes all previous understandings, written or oral.

I certify and acknowledge that I have carefully read all of the provisions of this Agreement and that I understand and will fully and faithfully comply with such provisions.

Proflowers.com

Employee

By: [Signature]  
Title HR Manager  
Dated: 1/24/00

By: [Signature]  
Printed Name: David M Carter  
Dated: 1/24/00

Exhibit A  
PRIOR INNOVATIONS

1. All current and future tips, tricks articles, sample program and files on the VB Tips & Tricks web site ([www.vbtt.com](http://www.vbtt.com)) are the sole property of David McCarter.
2. All text and sample code/programs in any current or future books written by David McCarter remain the sole property of David McCarter and/or the publishing company of the book.
3. All text, tips, sample code/programs using in any course, seminar or lectures taught by David McCarter (current and future) remain sole property of David McCarter.
4. All text and sample code/program written for any publication remains the sole property of that publications publisher and/or David McCarter
5. All code written by David McCarter on a consulting basis for any company/individual remains the sole property of that company/individual and/or David McCarter as long as it does not conflict with Proflowers.com
6. Any software written by David McCarter for NicheWare remains the sole property of David McCarter and NicheWare.

Exhibit B

LIMITED EXCLUSION NOTIFICATION

THIS IS TO NOTIFY you in accordance with Section 2872 of the California Labor Code that the foregoing Agreement between you and Proflowers does not require you to assign or offer to assign to Proflowers any invention that you developed entirely on your own time without using Proflowers' equipment, supplies, facilities or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to Proflowers' business, or actual or demonstrably anticipated research or development of Proflowers; or

(2) Result from any work performed by you for Proflowers.

To the extent a provision in the foregoing Agreement purports to require you to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable.

This limited exclusion does not apply to any patent or invention covered by a contract between Proflowers and the United States or any of its agencies requiring full title to such patent or invention to be in the United States.

I ACKNOWLEDGE RECEIPT of a copy of this notification.

By: \_\_\_\_\_

David McCarter  
(Printed Name of Employee)

Date: \_\_\_\_\_

1/24/99

Witnessed by: \_\_\_\_\_

Kathy Langue  
(Printed Name of Proflowers Representative)

Dated: \_\_\_\_\_

1/24/99